

SENATE BILL No. 405

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.5-7.

Synopsis: Small loans. Makes various changes in the small loan provisions of the Uniform Consumer Credit Code, including: (1) increases the maximum allowable principal for a small loan from \$400.99 to \$500; (2) removes limitations on finance charges; (3) increases delinquency charges; (4) allows a small loan to be secured by a borrower's authorization to debit an account instead of a borrower's check; and (5) prohibits a small loan if the total payable amount of the small loan exceeds 15% of the borrower's monthly gross income. (Current law provides that a small loan is prohibited if it exceeds 20% of the borrower's monthly net income.) Repeals a provision that limits the circumstances under which a small loan may be renewed.

Effective: July 1, 2004.

Paul

January 12, 2004, read first time and referred to Committee on Insurance and Financial Institutions.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 405

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-4.5-7-104, AS ADDED BY P.L.38-2002,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 104. "Small loan" means a loan:

4 (a) with a principal loan amount that is ~~more than at least~~ fifty
5 dollars (\$50) and ~~less than four~~ **not more than five** hundred ~~one~~
6 dollars ~~(\$401); (\$500);~~ and

7 (b) in which the lender holds the borrower's check **or receives the**
8 **borrower's written authorization to debit the borrower's**
9 **account** under an agreement, either express or implied, for a
10 specific period before the lender:

11 (i) offers the check for deposit or presentment; or

12 (ii) ~~seeks exercises the~~ authorization to ~~transfer or withdraw~~
13 **funds from debit** the borrower's account.

14 SECTION 2. IC 24-4.5-7-105, AS ADDED BY P.L.38-2002,
15 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2004]: Sec. 105. "Principal" means the total of:

17 (a) the net amount paid to, receivable by, or paid or payable from

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the account of the ~~consumer~~; **borrower**; and

(b) to the extent that the payment is deferred, the additional charges permitted by this chapter that are not included in subdivision (a).

SECTION 3. IC 24-4.5-7-107, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 107. "Renewal" refers to a small loan that takes the place of an existing small loan by:

- (a) renewing;
- (b) repaying;
- (c) refinancing; or
- (d) consolidating;

a small loan with the proceeds of another small loan made to the same ~~consumer~~ **borrower** by a lender.

SECTION 4. IC 24-4.5-7-108, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 108. "Consecutive small loan" means a new small loan agreement that the lender enters with the same ~~consumer~~ **borrower** not later than seven (7) calendar days after a previous small loan made to that ~~customer~~ **borrower** is paid in full, **renewed, or extended with a new small loan.**

SECTION 5. IC 24-4.5-7-109, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 109. "Paid in full" means the termination of a small loan through:

- (1) the payment of the ~~consumer's~~ **borrower's** check by the drawee bank or authorized electronic transfer;
- (2) the return of a check to a ~~consumer~~ **borrower** who redeems it for consideration;
- (3) **the authorized debiting of the borrower's account;** or
- (4) any other method of termination.

SECTION 6. IC 24-4.5-7-110, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 110. "Monthly ~~net~~ **gross** income" means the income received by the ~~consumer~~ **borrower** in the four (4) ~~week~~ **thirty (30) day** period preceding the ~~consumer's~~ **borrower's** application for a small loan under this chapter and exclusive of any income other than regular ~~net~~ **gross** pay received, or as otherwise determined by the department.

SECTION 7. IC 24-4.5-7-201, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 201. (†) Finance charges on ~~the first one hundred~~

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dollars (~~\$100~~) of a small loan are limited to fifteen percent (15%) of the principal.

(2) ~~Finance charges on the amount of a small loan greater than one hundred dollars (\$100) are limited to ten percent (10%) of the amount over one hundred dollars (\$100).~~

(3) ~~The total amount of finance charges may not exceed thirty-five dollars (\$35).~~

SECTION 8. IC 24-4.5-7-202, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 202. (1) Notwithstanding any other law, only the following fees may be contracted for and received by the lender on a small loan or subsequent refinancing:

(a) The parties may contract for a delinquency charge of not more than ~~five ten~~ dollars (~~\$5~~) (**\$10**) on any installment not paid in full within ten (10) days after its scheduled due date.

(b) A delinquency charge under this section may be collected only once on an installment, however long it remains in default. A delinquency charge may be collected any time after it accrues.

(2) An additional charge may be made not to exceed twenty dollars (\$20) for each:

(a) return by a bank or other depository institution of a:

(i) dishonored check;

(ii) negotiable order of withdrawal; or

(iii) share draft issued by the ~~consumer~~; **borrower**; or

(b) **time an authorization to debit the borrower's account is dishonored.**

This additional charge may be assessed one (1) time regardless of how many times a check **or an authorization to debit the borrower's account** may be submitted by the lender and dishonored.

SECTION 9. IC 24-4.5-7-301, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 301. (1) For purposes of this section, the lender shall disclose to the ~~consumer~~ **borrower** to whom credit is extended with respect to a small loan the information required by the Federal Consumer Credit Protection Act.

(2) In addition to the requirements of subsection (1), the lender must conspicuously display in bold type a notice to the public both in the lending area of each business location and in the loan documents the following statement:

"WARNING: A small loan is not intended to meet long term financial needs. A small loan should be used only to meet short term cash needs. Renewing the small loan rather than paying the

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debt in full will require additional finance charges. The cost of your small loan may be higher than loans offered by other lending institutions. Small loans are regulated by the State of Indiana Department of Financial Institutions.

A **consumer borrower** may rescind a small loan without cost not later than the end of the business day immediately following the day on which the small loan was made. To rescind a small loan, a **consumer borrower** must inform the lender that the **consumer borrower** wants to rescind the small loan, and the **consumer borrower** must return the cash amount of the principal of the small loan to the lender."

(3) The statement required in subsection (2) must be in:

- (a) 14 point bold face type in the loan documents; and
- (b) not less than one (1) inch bold print in the lending area of the business location.

SECTION 10. IC 24-4.5-7-401, AS AMENDED BY P.L.258-2003, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 401. (1) ~~Except as provided in subsection (2);~~ A small loan may not be made for a term of less than fourteen (14) days.

(2) After the ~~consumer's third~~ **borrower's fifth** consecutive small loan, another small loan may not be made to that **consumer borrower** within seven (7) days after the **due** date of the ~~third~~ **fifth** consecutive small loan. ~~unless the new small loan is for a term of twenty-eight (28) days or longer.~~ **However, the borrower and lender may agree to enter into a simple interest loan under IC 24-4.5-3 within seven (7) days after the due date of the fifth consecutive small loan.**

SECTION 11. IC 24-4.5-7-402, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 402. (1) A lender is prohibited from making a small loan to a **consumer borrower** if the total payable amount of the small loan exceeds ~~twenty fifteen~~ percent ~~(20%)~~ **(15%)** of the **consumer's borrower's** monthly ~~net~~ **gross** income.

(2) A small loan may be secured by only one (1) check or ~~electronic authorization to debit the borrower's account~~ per small loan. The check or electronic debit may not exceed the amount advanced to or on behalf of the **consumer borrower** plus loan finance charges contracted for and permitted.

(3) A **consumer borrower** may make partial payments in any amount on the small loan without charge at any time before the due date of the small loan. After each payment is made on a small loan, whether the payment is in part or in full, the lender shall give a signed and dated receipt to the **consumer borrower** making a payment

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showing the amount paid and the balance due on the small loan.

(4) The lender shall provide to each **consumer borrower** a copy of the required loan documents before the disbursement of the loan proceeds.

(5) A **consumer borrower** may rescind a small loan without cost not later than the end of the business day immediately following the day on which the small loan was made. To rescind a small loan, a **consumer borrower** must:

(a) inform the lender that the **consumer borrower** wants to rescind the small loan; and

(b) return the cash amount of the principal of the small loan to the lender.

SECTION 12. IC 24-4.5-7-404, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 404. (1) With respect to a small loan or subsequent refinancing, no lender may permit a person to become obligated under more than one (1) loan agreement with the lender at any time.

(2) A lender shall not make a small loan or subsequent refinancing that, when combined with another outstanding small loan owed to another lender, exceeds a total of **four five** hundred dollars (~~\$400~~) (**\$500**) when the face amounts of the checks written **or debits authorized** in connection with each loan are combined into a single sum. A lender shall not make a small loan to a **consumer borrower** who has two (2) or more small loans outstanding, regardless of the total value of the small loans.

(3) A lender complies with subsection (2) if the **consumer borrower** represents in writing that the **consumer borrower** does not have any outstanding small loans with the lender, **or with any other another lender, an affiliate of the lender or another lender, or a separate entity involved in a business association with the lender or another lender in making small loans**, and the lender independently verifies the accuracy of the **consumer's borrower's** written representation through commercially reasonable means. A lender's method of verifying whether a **consumer borrower** has any outstanding small loans will be considered commercially reasonable if the method includes a manual investigation or an electronic query of:

(a) the lender's own records, including both records maintained at the location where the **consumer borrower** is applying for the transaction and records maintained at other locations within the state that are owned and operated by the lender; and

(b) available ~~department approved~~ **third party** databases.

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(4) The excess amount of loan finance charge provided for in agreements in violation of this section is an excess charge for purposes of the provisions concerning effect of violations on rights of parties (IC 24-4.5-5-202) and the provisions concerning civil actions by the department (IC 24-4.5-6-113).

SECTION 13. IC 24-4.5-7-406, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 406. An agreement with respect to a small loan may not provide for charges as a result of default by the ~~consumer~~ **borrower** other than those authorized by this chapter. A provision in violation of this section is unenforceable.

SECTION 14. IC 24-4.5-7-407, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 407. (1) A renewal or a refinancing of a small loan requires:

- (a) a new contractual agreement;
- (b) a new check **or a new authorization to debit the borrower's account** as security; and
- (c) new disclosures under IC 24-4.5-7-301.

(2) If a ~~consumer~~ **borrower** pays off the small loan in cash or its equivalent, the check **or the authorization to debit the borrower's account** that was held as security must be returned to the ~~consumer~~ **borrower**.

SECTION 15. IC 24-4.5-7-409, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 409. (1) This section applies to licensees and unlicensed persons.

(2) **The following apply to small loans only when a check or an authorization to debit a borrower's account is used to defraud another person:**

- (a) IC 26-1-3.1-502.5 (surcharge after dishonor).
- (b) IC 26-2-7 (penalties for stopping payments or permitting dishonor of checks and drafts).
- (c) IC 34-4-30 (before its repeal).
- (d) IC 34-24-3 (treble damages allowed in certain civil actions by crime victims).
- and (e) IC 35-43-5 apply to small loans only when a check is used to defraud another person: (forgery, fraud, and other deceptions).

IC 24-4.5-3-404 (attorney's fees) does not apply to a small loan.

(3) A contractual agreement in a small loan transaction must include the language of subsection (2) in 14 point bold type.

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(4) A person who violates this chapter:

(a) is subject to a civil penalty up to one thousand dollars (\$1,000) imposed by the department;

(b) is subject to the remedies provided in IC 24-4.5-5-202;

(c) commits a deceptive act under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5;

(d) has no right to collect, receive, or retain any principal, interest, or other charges from a small loan; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation; and

(e) is liable to the ~~consumer~~ **borrower** for actual damages, statutory damages of one thousand dollars (\$1,000) per violation, costs, and attorney's fees; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation.

(5) The department may sue:

(a) to enjoin any conduct that constitutes or will constitute a violation of this chapter; and

(b) for other equitable relief.

(6) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a ~~consumer~~ **borrower**. A ~~consumer~~ **borrower** is not required to exhaust any administrative remedies under this section or any other applicable law.

SECTION 16. IC 24-4.5-7-410, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 410. A lender making small loans shall not commit nor cause to be committed any of the following acts:

(a) Threatening to use or using the criminal process in any state to collect on a small loan.

(b) Threatening to take action against a ~~consumer~~ **borrower** that is prohibited by this chapter.

(c) Making a misleading or deceptive statement regarding a small loan or a consequence of taking a small loan.

(d) Contracting for and collecting attorney's fees on small loans made under this chapter.

(e) Altering the date or any other information on a check **or an authorization to debit the borrower's account** held as security.

(f) Using a device or agreement that would have the effect of charging or collecting more fees, charges, or interest than allowed by this chapter, including, but not limited to:

(i) entering a different type of transaction with the ~~consumer~~ **borrower**;

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- 1 (ii) entering into a sales/leaseback arrangement;
 2 (iii) catalog sales; or
 3 (iv) entering any other transaction with the ~~consumer~~
 4 **borrower** that is designed to evade the applicability of this
 5 chapter.
 6 (g) Engaging in unfair, deceptive, or fraudulent practices in the
 7 making or collecting of a small loan.
 8 (h) Charging to cash a check representing the proceeds of a small
 9 loan.
 10 (i) Except as otherwise provided in this chapter:
 11 (i) accepting the proceeds of a new small loan as payment of
 12 an existing small loan provided by the same lender; or
 13 (ii) renewing, refinancing, or consolidating a small loan with
 14 the proceeds of another small loan made by the same lender.
 15 (j) Including any of the following provisions in a loan document:
 16 (i) A hold harmless clause.
 17 (ii) A confession of judgment clause.
 18 (iii) A mandatory arbitration clause, unless the terms and
 19 conditions of the arbitration have been approved by the
 20 director of the department.
 21 (iv) An assignment of or order for payment of wages or other
 22 compensation for services.
 23 (v) A provision in which the ~~consumer~~ **borrower** agrees not
 24 to assert a claim or defense arising out of contract.
 25 (vi) A waiver of any provision of this chapter.
 26 (k) Selling insurance of any kind in connection with the making
 27 or collecting of a small loan.
 28 SECTION 17. IC 24-4.5-7-412, AS ADDED BY P.L.38-2002,
 29 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2004]: Sec. 412. Upon the receipt of a check from a ~~consumer~~
 31 **borrower** for a small loan, the lender shall immediately stamp the back
 32 of the check with an endorsement that states:
 33 "This check is being negotiated as part of a small loan under
 34 IC 24-4.5, and any holder of this check takes it subject to the
 35 claims and defenses of the maker."
 36 SECTION 18. IC 24-4.5-7-408 IS REPEALED [EFFECTIVE JULY
 37 1, 2004].

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